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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,569	04/21/2005	Bruno Teychene	37261P110	3938

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BLAKELY SOKOLOFF TAYLOR & ZAFMAN  
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EXAMINER
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BACHMAN, LINDSEY MICHELE

ART UNIT	PAPER NUMBER
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3734

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06/28/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/532,569

Applicant(s)

TEYCHENE, BRUNO

Examiner

Lindsey Bachman

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 12-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) 12-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☒ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This Office Action is in response to Applicant's amendment/petition filed on 16 December 2006.

#### *Claim Objections*

Applicant is reminded of the format of the claims:

#### *Content of Specification*

(j) Claim or Claims: See 37 CFR 1.75 and MPEP § 608.01(m). The claim or claims must commence on separate sheet or electronic page (37 CFR 1.52(b)(3)). Where a claim sets forth a plurality of elements or steps, each element or step of the claim should be separated by a line indentation. There may be plural indentations to further segregate subcombinations or related steps. See 37 CFR 1.75 and MPEP § 608.01(i)-(p).

Claims 12-20 are objected to because of the following informalities: The claims do not contain line indentations to segregate the plurality of elements presented in the claims (see underlined portion above). Appropriate correction is required.

Claims 12-20 are objected to because of the following informalities: it is unclear as to whether the female tag component and the attachment and the applicator are being claimed as part of the invention. Applicant initially refers to these components functionally in claim 1, then continues to claim them structurally later in Claim 1. Appropriate correction is required.

### ***Drawings***

Applicant states in the amendment filed on 16 December 2006 that additional drawings, Figures 13 and 14 have been submitted and are described in the specification. These new drawings are not present in the application file.

### ***Oath/Declaration***

The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because:  
It does not state that the person making the oath or declaration acknowledges the duty to disclose to the Office all information known to the person to be material to patentability as defined in 37 CFR 1.56.

The correct statement should read: "I acknowledge the duty to disclose information which is material to patentability of this application in accordance with Title 37, Code of Federal Regulations Section 1.56."

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 12-20 rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it

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pertains, or with which it is most nearly connected, to make and/or use the invention.

The specification and drawings do not clearly enable one skilled in the art how to construct the invention. Further, the drawings do not accurately highlight the inventive qualities of the device. It is suggested that applicant includes an additional figure showing all of the parts so it is clear how they work together. For example, it is suggested that an additional figure is included showing how the clamp in figure 6 interacts with tags of figures 1-5. Also, a figure including the male tag panel would clarify the relationship between the male and female tag panel. Also, a cutaway side view of the tagging mechanism showing interaction of the various devices should be included.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

**Claims 12-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Destoumieux (US Patent 6,968,639) in view of Sanjurjo, et al. (US Patent Application 2003/0172560).**

Claim 12: Destoumieux'639 teaches an ear tag for marking animals with a substance sampling system comprising a male tag panel (1) with a punch (15) going into a female tag panel (1a) which is attached to a hollow punch (6) with the aid of two jaws which comprise an applicator tool (see jaws in Figure 1, unlabeled). After tagging and fastening the male element to the female element, the removable prick punch (13) can be removed to collect the sample (column 2, lines 43-63 and column 6, lines 10-14). Destomieux'639 does not teach the use of an absorbent material within the sampling device.

Sanjurjo'560 teaches an ear tag for marking animals that contains a piece of filter paper that absorbs blood produced during tagging. After the blood has dried, the paper can be stored for future testing (paragraph 10). The filter paper is reinforced by a removable piece of plastic (paragraph 11) and the paper is oriented perpendicular to the vertical axis of the male punch (see Figure 2, male punch unlabeled). The filter paper is attached to the reinforcing plastic which is attached along one jaw of the applicator tool (Figure 2).

Sanjuro'560 teaches that collecting blood samples on absorbent materials is common (paragraph 4). He also teaches that collecting blood samples while tagging avoids errors and saves money (paragraph 11). He also teaches that the filter paper can be stuck to a registration card for filing and later testing (paragraph 11). He also

teaches that attaching the filter paper to a reinforcing piece of plastic allows the filter paper to be removed without being broken (paragraph 11). Therefore it would have been obvious to one skilled in the art at the time of the invention to couple a piece of absorbent material with an animal tagging device.

Claims 13-14: The claimed limitations referring to the orientation of the absorbent material would have been obvious matters of design choice since applicant has not disclosed that having this specific feature solves any stated problem or is for any particular purpose.

Claim 15, 16 and 18: Destomieux'639 teaches a sampling device (hollow needle, 20), located on the edge of the applicator tool jaws, pushes the sample near shoulder 17, which is part of a removable prick punch (13) off of tip 15. Destomieux'639 teaches that the attachment must be connected to the hollow female head when it is removed (column 6, lines 10-14).

Claims 17 and 19: Sanjurjo'560 teaches that the filter paper/reinforcing plastic combination (the attachment) are fitted over the male punch portion with a slit (right side of figure 2); when this is incorporated into Destomeiux'639, as stated above, the male and female punch portions will be connected before removal, so therefore, the attachment will be fit with a slit over the female punch, as well.

Claim 20: Destomeiux'639 teaches marking the male and female panels with identical symbols. Furthermore, it is well known to mark animal tags because animals raised for human consumption are tagged so they can be tracked – not labeling the tags differently between each animal would render animal tagging useless because there

would be no way to monitor or differentiate between animals. (See Destoumieux'639, column 1, lines 36-43.) Destomeiux'639 does not teach marking the absorbent material. Sanjuro'560 discloses marking the absorbent material (filter paper) with a printed design to identify the samples (See Sanjuro'560, paragraph 12.) It would have been obvious to one skilled in the art at the time of the invention to mark the male and female panels as well as the absorbent material.

### ***Response to Arguments***

Applicant's arguments filed 16 December 2006 have been fully considered but they are not persuasive.

Applicant argues that there is no motivation to combine Destoumieux with Sanjuro because the purpose of Destomeiux is to extract a punched sample from the ear. However, as stated previously, it would be obvious to modify Destomeiux as taught by Sanjuro because a sample on paper is more convenient than an organic sample, because, for example, it can be stuck to a registration card and filed for later testing (paragraph 11). Further, blood will be released during punching and therefore it will be useful have an non-degradable from the animal, that can be stored more conveniently and longer than an actual punch from the animal's ear. Sanjuro also teaches that collecting blood samples while tagging avoids errors and saves money (paragraph [0011]), that the filter paper can be stuck to a registration card for filing and later testing (paragraph [0011]), and that attaching the filter paper to a reinforcing piece of plastic allows the filter paper to be removed without being broken (paragraph [0011]).



***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lindsey Bachman whose telephone number is 571-272-6208. The examiner can normally be reached on Monday to Thursday 7:30 am to 5 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Hayes can be reached on 571-272-4959. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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A handwritten signature in black ink, appearing to read "M J Hayes", with a stylized flourish at the end.

MICHAEL J. HAYES  
SUPERVISORY PATENT EXAMINER